APPENDIX

APPENDIX TO BRIEF OF GEORGE W. KENOTE, et al.

ABRIDGEMENT OF TESTIMONY

GORDON DICKIE, called as a witness in behalf of defendants:

Direct Examination by Mr. Church.

My name is Gordon Dickie, Sr. I live in Neopit, Wisconsin. I am a logging contractor. I am an enrolled Menominee. I attended grade school on the reservation. I graduated from the government Indian school in Lawrence, Kansas called Haskal Institute, my high school, in 1930. After graduation I traveled to the West coast and worked at various jobs in the West. I returned to the Menominee Reservation in the fall of 1931. Since then I have lived on the reservation or Menominee County for practically the entire period with the exception of service during World War II.

When I returned to the reservation I worked as a section hand for the railroad and later went to work in the logging operations at various kinds of common labor such as sawing logs, skidding, working in the cook shanty and so on. I am presently a director of MEI.

Prior to termination I represented the Tribe in Washington on a number of delegations. I was elected to the Advisory Council on numerous occasions and was elected and re-elected Chairman of the Menominee Advisory Council on four different occasions. I was first elected to the Advisory Council in 1942. Shortly thereafter I resigned and enlisted in the Navy and didn't return until 1946. I served on the Advisory Council from then until termination with one exception. One term of office I did not serve.

The Menominee people in a general election elected members to the Advisory Council to represent the Menominees. An election was held every two years. The Advisory Council represented the Menominee people in the conduct of their business which included the saw mill operations as well as agencies and social services. The General Council had authority to overrule any objection taken by the Advisory Council. The Secretary of the Interior also had the right to overrule the Advisory Council. The General Council was an assembly of all the adult Tribal members. Notices were posted at least ten days in advance, the order of by-laws was called and every adult member of the Tribe had an opportunity to attend the General Councils. This was the procedure before termination.

> Mr. Church read the stipulation of facts No. 4. In 1953, "Congress by concurrent resolution instructed the Secretary of the Interior to recommend legislation for the withdrawal of federal supervision over the Menominees as well as other named tribes."

The fact of this concurrent resolution was well-known throughout the Menominee Tribe. In the fall of 1953 the Menominees elected a planning committee. I was elected to serve on this committee. The basic purpose of the planning committee as to contact state officials requesting assistance in the problems that would be faced because of the proposed legislation. The planning committee had certain legislative activities. It proposed a plan to be presented to the Tribe in opposition to the proposals by Senator Watkins of Utah. It was felt at the time that the best means of defense was to propose a more equitable plan for the Menominees themselves. Such a plan was developed. This plan was an alternative legislation. It was submitted to

Congress after it had been submitted to the General Council. The response of Congress was to enact proposals promoted by Sen. Watkins. In other words, the planning committee was unsuccessful.

Mr. Church reads stipulated fact No. 5: "In 1954 Congress passed Termination Act Public Law 399."

This was the Watkins Bill that the planning committee opposed. The original proposal by Sen. Watkins called for termination on December 31, 1958.

Mr. Church asks the court to take judicial notice of the law, Exhibit 59, and reads from Sections 6 and 8 as follows:

> "The Secretary is hereby authorized and directed to transfer to the Tribe on December 31, 1958, or on such earlier date as may be agreed upon by the Tribe and the Secretary the title to all property real and personal held in trust by the United States for the Tribe."
>
> "The Tribe is authorized to select and retain the services of qualified management specialists including tax consultants for the purpose of studying industrial programs and some other things. Such reports shall be completed not later than December 31, 1957."

The planning committee continued to function after the Termination Act was passed on December 17, 1954. The first thing the planning committee did after the termination was passed was to contact various state officials including the governor of the State of Wisconsin to ask for assistance in solving the problems created by the

Termination Act. The State of Wisconsin responded to these requests. The Menominee Indian Study Committee was established or created as a special committee. On this committee were the Wisconsin attorney general, various department heads of the state and Menominee Tribal members.

At that time I was a member of the Menominee Indian Study Committee as a representative of the Tribe. The Menominee Indian Study Committee reported to the Legislative Council. The Legislative Council reports to the legislature. The Menominee Indian Study Committee had connections with the University of Wisconsin. A special committee was established to assist the Menominee Indian Study Committee. It was comprised of University of Wisconsin personnel. The Memoninee Indian Study Committee went to the Department of Health, Education and Welfare. It looked into such problems as sanitation care, forestry problems including forestry management, tax problems and various social problems including law and order. The Menominee Indian Study Committee operated by assigning certain departmental officials certain assignments on the basis of which they were to develop necessary reports to be submitted to the committee.

* * *

The Menominee Indian Study Committee furnished the planning committee with preliminary reports in 1956. The Menominee Indian Planning Committee did very little upon the receipt of these reports. This was because the members of the Planning Commission were all employed. They did not have time to develop and coordinate all the reports and, of course, there was the hope that the makeup of the Indian Committee of the United States Congress would change so as to give more favorable treatment to the Menominee people. This took place under the Watkins Bill.

On July 14, 1956, the federal government passed additional legislation. The two major changes of the July 14th act, as shown in Exhibit 60, were that the forests would be operated under sustained yield and that not only reports were going to be required in 1957 but also the plan. By sustained yield was meant that only the fully ripened and matured timber was to be produced from the forest in order to perpetuate the forest.

> Mr. Church read Section 7 of Ex. 60: "The Tribe shall, as soon as possible and in no event later than December 31, 1957, formulate and submit to the Secretary a plan for the future control of the Tribal property."
>
> Mr. Church read further from Section 7: "The plan shall contain provision for protection of the forest on a sustained yield basis."

A sustained yield basis means that you confine your operation to cutting only trees that are fully matured and ripened timber. The younger growth is left remaining so that on a fifteen year cycle you can go back and continue to manufacture. In other words, this would create a forest for industry indefinitely. The bill was passed in July, 1956. By autumn of 1957, the Menominees had made no progress towards development of the Termination Plan that was now required by law. Again, this was because the members were employed full-time and did not have time to put these reports together to develop the plan. As a result we began to get reports out of Washington that they were going to respond unless we quit dragging our feet and proposed a plan. If we didn't they would respond in the form of legislation. In response to this response, in the fall of 1957 the General Council elected a Co-ordinating and Negotiating Committee. This

was a full-time committee. The only person who was not residing on the reservation who was put on the committee at that time was George Kenote.

> Mr. Church read stipulation No. 6: "In November 1957 a General Council of the Tribe created the Co-ordinating and Negotiating Committee herein called the 'Committee'. Its function was to develop a Termination Plan such as was called for by the Termination Act. It acted under authority from the General Council which created it and under the Advisory Council.

The Co-ordinating and Negotiating Committee started to operate in January, 1958. It took the committee approximately one year to develop a plan.

> Mr. Church read stipulation No. 8: "A Termination Plan was proposed to a General Council in a series of three meetings in January of 1959. As amended by those present, the plan was approved by a vote of 91 to 16 on January 17, 1959."

There were changes made to the Termination Plan after it was adopted in January, 1959. I don't recall all the major changes. I remember one was reduction in the number of people to serve on the Board of Trustees. Another change was that a majority of Menominees would serve on the Board of Trustees. These changes were made prior to the adoption of the plan of the General Council on January 17, 1959. There were also changes made after January 17, 1959.

The plan called for certain legislation by the State of Wisconsin. One of the principal legislative items was the Forestry Tax Bill. Another was the governmental organization proposition to create a separate county.

Those are the ones I remember. This legislation was secured in 1959. At that point the Coordinating and Negotiating Committee disbanded and Mr. Kenote left the Reservation.

In the course of the development of this plan, I discussed with many Menominees the right of the trustees to vote shares of stock for land sales under Article XII of the Articles of Incorporation. I told the Menominees that the sale of land could only be authorized by ⅔ vote of the trustees. During the course of the development of this plan by the Coordinating and Negotiating Committee, I never told anyone that the trustees did not have this power. During the course of the development of this plan, I never heard anyone make any statements or contentions that the trustees during the life of the trust could not act for the shareholders in approving land sales under Article XII of the proposed Articles of Incorporation.

The Menominees did very little during the year following July, 1959 when the legislature passed the legislation necessary to complete the Termination Plan. Again, the problem of employment kept individuals from having enough time to spend on implementing the plan. The Congress responded to this inaction by the Menominees by enacting legislation that provided that if the Menominees did not present an acceptable plan, then the Secretary of the Interior was instructed to develop a plan to control and operate the resources, the handling of the funds, the whole operation of the Tribe without any consultation with the Tribe.

Mr. Church referred the court to Ex. 62 which is the amendment to the Menominee Termination * * * Act passed in September, 1960. He read: "If the

Menominee Tribe and the secretary cannot agree upon a plan within the aforementioned six-month period or if they agree upon a plan within such period and the Tribal corporation and voting trust contemplated by the plan are not established prior to March 1, 1961, the secretary shall transfer the Tribal property to a trustee of his choice." He also pointed out that this legislation gave an extension of the termination date from December 31, 1960 to April 30, 1961.

The Tribe responded to this new move by the federal government when a resolution was presented to the General Council requesting the Commissioner of Indian Affairs to assign George Kenote back to the Reservation to work on the Termination Plan.

Mr. Church read the resolution offered in Ex. 46: "Now, therefore, be it resolved, by the Menominee general council meeting in regular session at Keshena, Wisconsin, on July 25, 1960, hereby request that the Secretary of the Interior, or the Commissioner of Indian Affairs take appropriate action to arrange to assign Mr. Kenote to the Menominee Reservation for the time required to assist in working out termination problems in accordance with Tribal and Bureau plans as formulated by the C & N Committee, the Advisory Council, and the General Council of the Tribe."

Cross Examination by Mrs. Downs.

I stated that I understood Article XII in the Articles of Incorporation to mean that the trustees and not the Menominees would vote on the sale of land. I never ex-

pressed to anyone a different viewpoint or heard any other viewpoint expressed in connection with the Board of Trustees.

Mr. Dickie then reads from plaintiffs' Ex. 12, page 11:

> "Mrs. Dick: This Article XII I don't think we should give all the power to the Board of Directors. The power should stay with the shareholders.
>
> Mr. Dickie: Ladies and gentlemen, no matter how small anything is it should be left for the shareholders. Everything should be left for the shareholders to decide, they should have the power. Ladies and gentlemen, I am going to move for the adoption of the substitute Article XII, land operations, as read by Mr. Kenote with one exception."

I am the Mr. Dickie present at that meeting. I imagine I was present at the January 10th meeting of the Menominee Council which is covered in plaintiffs' Ex. 10.

Mr. Dickie reads from plaintiffs' Ex. 10:

> "It states under Article XII, Sale of Land, that it can be done without the consent of the shareholders. Read it. Read your copies. We are going to vote on this question here. Do you want that control—Indian control or white control? They don't have to ask you. That is what it says here. Fellow Menominees, I am in agreement with Mr. Kenote. It is those outside people who are experienced in those fields who I would like to get on the Board of Directors. You got to change the control someplace."

That statement was made by Mr. Monroe Weso.

Mr. Dickie then reads statement of Buddy Weso:

"Mr. Buddy Weso: I would like to have that section revised so that no land could be sold to outside interests. If you give the Board of Directors the right to designate any land as forest land such as 300,000 acres of this reservation as forest land they could sell it without our consent to outside interests."

I don't know if I was actually at the meeting at the time the statement was made. I didn't necessarily sit at the meeting for the entire day. You are in and out. You don't just continually sit there. I don't know if I was there when Mr. Buddy Weso's statement was made. I have no recollection of it. He could have been the fourth speaker after I spoke. Several things were discussed at the meeting on January 17th. One was Article XII and another was Article V which referred to the balance on the Board of Directors.

Mr. Dickie then reads a statement by Mr. Andrews on Exhibit 12, page 20:

"Mr. Andrews: It was stated here and I think it has certainly caused a lot of confusion that by establishing a Board of Directors with non-members of the Tribe, a Tribe would be giving away control of its properties. Now, who actually is going to own this property and coming back to that control. The 3,270 Menominee stockholders are the owners. This is where the control lies. Corporations are owned and controlled by the stockholders. In this case 3,200 Menominees will be the stockholders. Mr. Sammond went into this very thoroughly last Saturday."

[Mr. Church points out that Article XII was not being discussed at this point.]

I am at present on the Board of Directors. I am familiar with the joint venture contract, Lake of the Menominees. I attended the October 15, 1971 Board of Directors meeting. The matter of extending the contract did not specifically come before the Board. First of all, prior to that meeting there were discussions and agreements reached on increasing the number of lots to be sold above the original proposal about 800 more lots. At the October meeting because of advance publicity and other problems the costs of sales were increasing. Those increases were discussed.

The things I just mentioned and the problem of extending the contract are not exactly isolated problems. The increased costs of sales was an isolated problem, but the expanding of the project itself would not be an isolated problem. I might suppose it was negligence on my part as a member of the Board of Directors but with all of this in the picture I just assumed we would carry on to the completion of the project. It just never occurred to me that you had to go through all these special actions to expand the program. I didn't realize you had to do that.

Mrs. Downs reads from Mr. Dickie's deposition:

"Q. But you don't actually remember whether or not there was any discussion whatsoever as to extension—

A. I don't remember specifically, no.

Q. All right. And you also do not remember whether at the time you were aware of the clause in the contract?

A. I don't remember.

Q. When was it called to your mind then?

A. It wasn't until the early part of 1972 that it was brought up.

Q. And where was it brought up?

A. I think there was some discussions on the Board, but I don't recall for sure."

Redirect Examination by Mr. Church.

Referring to the Board of Directors and the number of non-Menominees on the Board of Directors, there was a dispute over whether or not a majority of the Tribal members should serve on the Board of Directors or whether the majority should be non-Tribal members. The Tribe decided on that occasion that the majority of non-Tribal members would serve on the Board of Directors, that occasion being the General Council on January 17, 1959. We were not discussing Article XII of the bylaws.

GEORGE KENOTE, called as a witness on behalf of the defendants, testified as follows:

Direct Examination by Mr. Church.

My name is George W. Kenote. I live in Keshena, Wisconsin. I was born in Neopit, Wisconsin on February 2, 1911. I attended grade school at the Catholic Mission School in Keshena, Wisconsin. I graduated from high school at Shawano High School in 1929. After graduation I tried to get into a couple of colleges on an athletic scholarship. For the most part, I worked in lumber camps and saw mills. I started out as a kitchen helper in one of the logging camps.

I went out logging logs, drove team, sawed logs and ended up as a log scaler and timekeeper. I stopped working for the mills in February, 1934. I was then appointed Chief of Police for the Menominee Reservation. I was employed by the Bureau of Indian Affairs. I worked for

the Bureau of Indian Affairs for 28½ years. I started out in 1934 as Chief of Police for Menominee Reservation. In 1937 I was transferred to Duluth as a special officer for upper Wisconsin, Minnesota and Michigan. I was transferred to the southwest for some time and then back to Rapid City, South Dakota in 1944. I went into service. I came out of service and was back to the Menominee Reservation in 1946. In 1950 I was transferred to Albuquerque, New Mexico as the area special officer in charge of parts of Arizona, New Mexico, Colorado and Utah. In 1966 I was transferred to Washington, D.C. as the assistant in charge. At the time I left the Bureau I was assistant in charge of the Law Enforcement Division, Bureau of Indian Affairs.

> Mr. Church reads stipulation No. 6: "In November, 1957 a General Council of the Tribe created the Coordinating and Negotiating Committee, herein called the 'Committee'. Its function was to develop a Termination Plan such as was called for by the Termination Act. It acted under authority from the General Council which created it and under the Advisory Council."

In November, 1957, I was located in Washington, D.C. I was elected by the General Council to the Menominee Coordinating and Negotiating Committee. I was then elected chairman of that committee by that committee. I actually began to work on January 25, 1958 but I had most of the documents previous to that time for review and study.

Our first job after organization was to gather all of the reports that had been prepared by the Menominee Study Committee by different tribal groups and by the Univer-

sity Study Group that was attached to the Menominee Study Committee. We had to review those reports and try to get some direction out of them. We also had to set up a series of conferences with department heads at Madison —the attorney general's office, the Department of Public Welfare, the Department of Public Instruction, Taxation, Conservation Department, Public Service Commission and Industrial Commission. Why did we meet with these departments? For instance, with the Conservation Department, we wanted to explore at that time the uses and possibilities of the Wisconsin Forest Crop Law and regulation of a forest under sustained yield. We wanted to get the tax impact particularly. We consulted with the Social Service agencies, Education, Welfare and those agencies to get a better picture of what the demands through taxation were going to be on our new community. We wanted to consult with the regulatory agencies for instance on sewer and water, electrical utility and telephone utility. We wanted to know whether they could be owned by Menominee Enterprises. We were also concerned with their organization and about their sustaining themselves by way of financing.

We set up meetings with surrounding County Board members and their officers. We set up meetings with Florence, Marinette, Langlade, Shawano and Oconto counties. There were several committees on different subjects. With Marinette and Oconto counties we wanted to know about their operation of county forests, what the tax implications were there and what the benefits were. We talked with the Marinette County Board for instance on their operation of a county hospital—how it was financed, managed and so forth. We talked with Florence County because it is a county somewhat comparable in value and popula-

tion and problems. We talked to them about their school problems, and tax resources and the county situation under the Forest Crop Law under natural forest laws and so forth.

We also talked with private companies. We set up conferences with Goodman Lumber Company and Calumet Lumber Company and people in related industries. We wanted to explore management techniques and particularly the operation under Wisconsin Forest Crop Law. We had certain proposals in respect to that law that we might have pursued if they were feasible. We generally wanted to know techniques of managing large forests such as our own out from under government control.

We made attempts to keep the Menominee people advised of the activities of the Coordinating and Negotiating Committee's activities. From the outset, we set up a system of weekly written reports to the Menominee Advisory Council. Mr. Dickie who was a member of the Coordinating and Negotiating Committee was also a member of the Advisory Board. He was serving as a liaison officer. During the period in which the Negotiating and Coordinating Committee was operating the Advisory Council usually met monthly but there were also special meetings.

We also set up a system of publishing reports that were called the Menominee News which was mailed to all Tribal members all over the country. The Menominee agency published the Menominee News and that vehicle was available to the Coordinating and Negotiating Committee for our reports. The Menominee News was used as a vehicle for keeping Menominees informed. Through the Menominee News we announced that we would have office hours on Saturdays. We invited people to come and talk with us.

We announced that we would hold meetings at home situations with different groups who would invite us. These were attempts to give the Menominees a chance to explain their wishes to the Coordinating and Negotiating Committee. These meetings in homes were held. We set up a series of meetings with the Menominee Study Committee and different government agencies and kept them informed of what we were doing. Additionally, we set up special meetings by notice and asked the people to come in and talk with us or we would go to Keshena and Neopit and talk with these different groups. Later on, we had meetings preparatory to regular General Councils. I also used personal contacts outside of any formal meeting context.

In 1958, I think I knew just about all the people living on the Reservation who were enrolled Menominees and I am sure the other committee members did too.

> Mr. Church: Mr. Church read from Exhibit 52 which is some minutes of a General Council Meeting held in April of 1959: "Consideration of the form of local government to prevail on the reservation on termination of federal control."

The Coordinating and Negotiating Committee asked that this meeting be held. It was critically important for us to determine the form of local government and the course of direction we wanted to take at an early date as we determined from the conferences we had been holding. This was because, for example, the tax implications were becoming very important. We needed to know the tax implications with respect for instance to the use of the Wisconsin Forest Crop Law or some other form of taxing a forest under sustained yield restrictions. And also we had to balance the tax implications with respect to sufficient income to

support the community. For instance, if we were not permitted to form Menominee County and had to go into Shawano and Oconto Counties under their tax structure, the taxes on the full value of the forest would be prohibitive. We would have had to consider the use of the Wisconsin Forest Crop Law. If we were permitted to form our own county, we had a different situation so that we could accommodate ourselves. One of our principal considerations was to retain the Menominee Forest as a solid economic block for the Menominee people.

Concerning local government, we had three alternatives. One was to remain as we were then geographically situated —seven townships in Shawano County and three in Oconto County. For instances, in Oconto County we would have a considerable piece of value going in Oconto County without any substantial representation. This was partially true in the Shawano County area also. There was some discussion of splitting us up and attaching us to three counties. We wanted to avoid that. There was some discussion of attaching us all to one of the other counties. Under either of these situations, we would have a different tax situation. The remaining alternative, of course, was to form our own county.

At the meeting we reached a general consensus. By resolution the General Council instructed us to pursue the idea of a separate county and ordered the question put to a referendum. These things were done. There were General Council meetings held on the 13th, 14th and 23rd of August, 1957. These meetings were called at the request of the Coordinating and Negotiating Committee. The purpose was to submit to the people certain recommendations that we were prepared to make. We wanted to get their

advice and to discuss them in general so that we could have a course of direction to follow. We did some preparatory work with the Menominee people prior to the scheduled General Council meetings.

Defendants' Exhibit 26 is a public notice that was posted throughout the Reservation advising that the Coordinating and Negotiating Committee would hold meetings with the people at Keshena at 7:00 P.M. on July 28, 1958 to hear and discuss opinions with respect to the land use regulations to be adopted by the Tribe for use after termination. That meeting was held. Defendants' Exhibit 27 is a notice posted by the Coordinating and Negotiating Committee throughout the Reservation giving notice of a meeting to be held at Keshena at 7:00 P.M. on August 7, 1958 for a discussion of regulations on transfer alienation of individual shares; organizing for management and control of public properties; and administration of minors' shares. This meeting was held.

> Mr. Church: Mr. Church read into the record the agenda of the August meetings. On page one the first order of business was consideration of regulations to govern future land use and tenure to be embodied in the Articles of Incorporation.

The Coordinating and Negotiating Committee wrote that agenda. The particular provision concerning land use was a very important matter of discussion among our people. It was important that the Coordinating and Negotiating Committee get some direction from the people with respect to land use. There was quite a wide division among our people as to whether or not they would issue warranty deeds to Tribal members or restrict to leasing only or some

other such form. The issues surrounding this question were, for example, that the people wanted to keep the Reservation intact, particularly the forests, as far as possible. In that respect we wrote those interested that we were considering leasing only. On the other hand, there were many of our people who owned their farm sites, their business sites and home sites and who had considerable investment in them. There was a feeling that Menominee Enterprises might not be successful and down the road somewhere some other management groups might get control of it. The people who had these agricultural businesses and home site investments might then be left out on a limb owning no property. These people were interested in acquiring title.

A consensus on this point was reached at the August meeting. On an informal vote we were told to develop a plan for leasing to Tribal members. The meetings called in August failed to turn up a quorum, that is 75 attending Menominees. Under the circumstances, we would continue to discuss the different matters informally. We would take straw votes, if you will, of the group that was in attendance. These votes were not binding. It was announced that we would come back with final plans at some later date.

The problem of getting a quorum at General Councils has been a historical problem. Knowledge of this problem affected our deliberations as to how the plan should be developed. Knowledge of this problem formed one of the basic reasons for developing the voting trust principle. We wanted to be assured of continuity of management. We wanted to be assured of quorums and the required annual meetings under corporate laws and we wanted to accomplish what we call keeping business affairs out of Tribal politics.

The Coordinating and Negotiating Committee heeded the advice on land use and it was given by the straw vote taken during the August, 1958 open Advisory Council meetings. We instructed our attorneys to draft the Articles to provide for leaving home sites, farm sites and business sites to Tribal members only. With respect to sales, we had had conferences with state people, various government people and commercial corporate people.

It was felt that at some point it was going to be very important that Menominee Enterprises or the Menominee Tribe be able to transfer title to a proposed industrial developer in order to develop industrial improvement and possibly resort or recreational enterprises. With that in mind we instructed the attorneys to draft Article XII with the so-called 2/3 rule as is now drafted. The Menominees were given advance information concerning this Article which was drafted in accordance with our instruction prior to the vote in General Council.

Committee meetings were held beginning December 29, 1958 and running through January 5, 1959 at South Branch Community Hall or Zoar Community Building and at Keshena and Neopit. I was present. We had general, open, round-table discussion of the business management we were proposing. At the last two meetings we had copies of the drafts for distribution. The four communities, South Branch, Zoar, Keshena and Neopit, represent all of the various identifiable communities in Menominee County.

Exhibit 29 is a two-page memorandum dated January 2, 1959. It is a memorandum by the Coordinating and Negotiating Committee which was mailed out to all Tribal members all over the country. Attached to it were documents which were drafts of the Articles of Incorporation,

Bylaws, Voting Trust Agreement, the Minors' Trust and I believe the Bond Indenture. There was also a proposed letter to the Secretary of the Interior. There were some 50 odd pages. These were duplicated and made available at our office and at the council office at the reservation. Some of them were mailed out to people who wrote in and asked for them. Approximately a thousand of these were distributed to Menominees.

During the course of the development of this termination plan I made statements concerning the power of the trustees during the life of the trust to vote the shares in approval of land sales under Article XII of the proposed Articles of Incorporation. I made such statements to various numbers of people—Menominee people, goverenment people and state people. This was a very important subject of discussion. I made such statements before the plan was adopted. I made such statements after the plan was adopted. I told people that during the life of the voting trust the voting trust would hold all of the powers of the members of the Tribe. I told people that this was necessary for stability and continuity of our management. I told people that this assured us the preservation of the forests under the best method. I told people specifically about the right of the trustees of the proposed Articles of Incorporation. I told people that the Articles as drafted left the power to consider the sale of the property to the voting trust during the life of the voting trust. There was no dispute up until termination had occurred about whether the trustees had such power. I never told anyone that the trustees did not have this power.

Meetings were called on January 9th and 10th for the purpose of reviewing the proposed Articles of Incorporation, the Bylaws, the Voting Trust Agreement, Minors'

Trust and the Bond Indenture. At this meeting the Menominees were presented with a resolution to consider the approval of the plan as submitted. A consensus was reached at the meetings of January 9th and 10th. The council preferred to strike the word "part".

We had first proposed that the Board of Trustees would be made up of four non-Menominees and 3 Menominees. This was reversed. The Board of Directors Article as written provided that five non-Menominees would serve with four Menominees. This was reversed. There was also some discussion on Article XII on land. Between January 10th and 17th the change in the Articles with respect to the Board of Directors gave us much concern with regard to our relationship with legislative people in Madison. We knew we had to present to the legislature what they demanded in the way of a viable, workable corporation. They wanted to know who was going to run the business. We had devised our article on the Board of Directors to convince the legislature that we would have adequate and competent people on the Board of Directors, experienced people from the fields of business, finance, law, taxation and so on. When the General Council reversed this, we went to work with the people to convince them that we should leave Article V as formerly written. We also had further discussion with respect to the article on land. Between January 10th and 17th we talked with a lot of people in order to come up with something that would satisfy them and the council.

Mr. Church: Mr. Church reads the first sentence of Exhibit 29, "Unless otherwise authorized by the affirmative vote of the holders of not less than two-thirds of the outstanding shares of stock entitled to vote thereon, the corporation shall have no authority

to sell, exchange, assign or convey or otherwise transfer all or any portion of the real property owned by the corporation other than real property designated by the Board of Directors as forest lands."

Mr. Church then notes that the exhibit goes on to provide that the Board of Directors has the right to lease, mortgage or pledge property on such terms and conditions as it shall deem advisable without the approval of shareholders.

Mr. Church then reads Article XII as it was approved at the January 17th, 1959 meeting or it appears on page 8 of Exhibit 12, "Unless otherwise authorized by the affirmative vote of the holders of not less than two-thirds of the outstanding shares of stock entitled to vote thereon, the corporation shall have no authority to sell, exchange, assign, convey or otherwise transfer all or any portion of the real property owned by the corporation provided, however, that the Board of Directors or the appropriate officers at the direction of the Board of Directors may mortgage or pledge the corporation assets for borrowing purposes it shall deem necessary and advisable in an amount not exceeding $250,000; and provided further that the Board of Directors or the appropriate officers at the direction of the Board of Directors shall have authority to lease real property other than lands designated as forest lands."

Nothing was done at this meeting with respect to changing the basic policy of the corporation to permit the Board to lease only to individual Menominees. Nothing was done at this meeting with respect to changing the basic policy

of the corporation to permit sales in unusual cases with the approval of the shareholders. Nothing was done at this meeting which affected the right of the trustees to vote for sales of land in extraordinary cases. I am now talking about the meeting of January 17th. The termination plan as amended on January 17, 1958 was submitted to the Secretary of the Interior as required by the Termination Act. It was also submitted to the Menominee Indian Study Committee at Madison.

The deadline for the submission of a plan at this time was February 1, 1959. The Coordinating and Negotiating Committee worked with the Congress to gain an extension of time from Dec. 21, 1957 to February 1, 1959. As submitted to the Menominee Indian Study Committee, the plan consisted of three bills which should be acted upon by the state legislature. One to create Menominee County, one to set up a form for taxing the forest under sustained yield and a third to permit the state treasurer to transfer escrowed money to Menominee County when created. It was absolutely important and necessary that we get the Forest Tax Law passed and preferably the Menominee County bill too. In addition to that, the Menominee Study Committee and the Legislative Council Committee advised us that they had to look at the economic plan along with the proposed legislation in order to determine whether Menominee County had a chance to survive post termination based on its business plans.

We had to make an appearance before the Menominee Indian Study Committee with our plans on January 23, 1959. The Menominee Indian Study Committee received the plans for study and review. I had occasion to deal with the Menominee Indian Study Committee staff personnel during the review process. We ran into some objections

to the plan at that time. Two principal objections developed. The most important one had to do with Article XII as adopted by the Tribe on January 17th. As a matter of public policy they objected to what they called a "company county" where one land owner controlled the uses of all the land. They thought as a matter of public policy that the Tribal members ought to have the right to take title to their homesites, business sites, farm sites and so forth. The other objection was they wanted to have more stringent rules pertaining to the sustained yield operation of the forest. Reports were submitted by the staff of the Menominee Indian Study Committee analyzing the Menominee Termination Plan.

At this time John Bowers was in the attorney general's office. He was assigned to the Menominee termination matters. Exhibit 35 which is dated April 20, 1959 was a report made available to the Menominees as of that date at the Menominee Study Committee meetings at Madison. I will read the last sentence on the bottom of page four, "Sale of land is expressly prohibited except pursuant to vote of two-thirds of the stockholders who would be the voting trustees for at least 10 years."

The Menominee Indian Study Committee held meetings convened for April 19, 1959 at Keshena, Wisconsin. Meetings were held on April 20, 21, 22 and 23, 1959 in Madison, Wisconsin.

> Mr. Church: Mr. Church read from Exhibit 34 which is a transcript of the hearings that were held in Keshena on the Reservation by the Menominee Indian Study Committee. The Chairman was Attorney John Reynolds. He was asking questions of a number of Menominees on a number of different subjects. He was testing their understanding of the Menominee termination plan.

"Chairman: Mrs. Weso, one last question. What is your understanding as to the case of the business plan that is proposed by the committee that is adopted? Who would have the say, the control for whether or not the land would be sold or mortgaged? Do you have any understanding of that?

Jennie Weso: Yes, I have.

Chairman: Who would have the say?

Jennie Weso: Two-thirds of the majority vote of the Menominee Tribe. That is my understanding. That is what the Articles of Incorporation say.

Chairman: Do you understand the voting trustees own the stock? Do you understand it wouldn't be the tribe? It would be the voting trustees.

Jennie Weso: I understand that."

There were around 50 to 60 people at that hearing. Mrs. Jennie Weso is the wife of the Mr. Monroe Weso, Jr. who was referred to this morning. The Coordinating and Negotiating Committee responded to the criticism by the Menominee Indian Study Committee that under the plan Menominee County might turn into a company county. After discussion with the attorney general's office some of the human rights people in Madison and some social agencies—we drafted a different article and we asked for the General Council to consider a revision of the article. A General Council meeting was set for April 11, 1959. A quorum did not develop. The Advisory Council then instructed the Coordinating and Negotiating Committee to put the question to a referendum. The referendum was mailed out to all Tribal members all over the country on May 2, 1959. It was returned on May 15, 1959. 448 people favored the revision. 30 people opposed the revision.

This revision loosened up the provisions with respect to sales as they applied to Menominees. Exhibit 32 is the resolution that was put out by the Advisory Council when no quorum developed for a General Council meeting. Exhibit 33 is a memorandum from the Coordinating and Negotiating Committee explaining the proposed change. On the second page, the change was underlined and this is how the Articles of Incorporation looked as they finally ended up after all amendments. No change was made to the language which permitted under the first sentence the sale of land to non-Menominees upon the approval of 2/3 of the outstanding shares of stock entitled to vote thereon. The Menominee Indian Study Committee thought that the referendum revision was sufficient as adopted. When the revision was adopted they then approved the termination plan.

> Mr. Church: Mr. Church presented Exhibit 36 which was a report dated April 30, 1959 of the Menominee Indian Study Committee which basically approves of the Menominee termination plan as amended.

The termination plan was amended one more time by the General Council. The resolution dated July 27, 1959 which is Exhibit 38 is the last substantial amendment to the termination plan. This last revision was related to the state's insistence that the rules on operation of the forest and sustained yield principals be insured. We wanted to support the Sustained Yield Tax Law which set up some of these regulations on operating under sustained yield principles. The legislative people, some of the departmental people and the attorney general's office and the Conservation Department insisted that we also had a covenant to this effect

in the forest land deed: Creation of Menominee County and the adoption of it or enactment of the Sustained Yield Tax Law are contingent on the agreement of the Tribe to a 30-year restriction on sale or incumberment of the forest.

The Advisory Council was composed of the twelve elected members of the Tribe serving on a sort of Executive Committee for the Tribe on a day to day basis. The General Council was made up of a minimum of 75 adult members of the Tribe in an open meeting. The General Council was the basic ruling body for the Tribe and had been since 1872. I knew that advice was given to the Menominees concerning Article XII in writing prior to the final amendment in July of 1959. The Menominee News was sent out to all Menominees no matter where they lived. Of the 3200 enrolled Menominees, we considered at that time about 800 were non residents. I will read from Exhibit 37 which is an issue of the Menominee News of January 1, 1959: "The plan does grant to the corporation's officers the right to lease non-forest lands, but sale of land is prohibited unless two-thirds of the stockholders vote otherwise; and in this case the voting stockholders would be the voting trustees for at least ten years." There is no doubt in my mind that this conclusion was what the drafters of the plan intended.

> Mr. Church: Mr. Church, Mrs. Downs stipulate that Mr. Donald Bosshard who was a lawyer who advised the Coordinating and Negotiating Committee advised that committee that the voting trustees would have the right to approve shares under Article XII so long as the trust was in existence.

The legislation necessary for this plan was assured of passage in the middle of July, 1959. I think it was on July 17th that the legislation went through the Senate. I was assured it would go through the Assembly. I then returned to Washington.

When back in Washington, I kept myself advised about Menominee problems. I received copies of all correspondence between the attorneys, the people in Madison, the Tribal officers and the Bureau of Indian Affairs people. I kept in contact as well with the legal counsel in Washington, the Wilkinson firm. I attended conferences while in Washington on Menominee problems. We had conferences with the Bureau of Indian Affairs on roads. We had conferences with the Bureau of Indian Affairs and the Department of Health, Education and Welfare, on educational improvements and construction of new facilities to accommodate public school problems. We had conferences on furthering the sewer and water improvements in the Villages of Keshena and Neopit.

In October, the Secretary of the Interior's office assigned me to set in on what was known as the final review of the Menominee termination plan by the attorneys and the Secretary's office representing the State of Wisconsin and the Tribe. These were held in October, 1959. I prepared a memorandum summarizing Menominee problems in April, 1960. It is Exhibit 44. At this time there was considerable discussion and criticism in the Department of the Interior, the Bureau of Indian Affairs and up on Capitol Hill about the lack of progress being made in the implementation of the Menominee termination plan. There seemed to be a lot of foot dragging. To overcome that criticism, I wrote this report. I tried to indicate to the department people and the Congressional people that there was a bigger problem than they realized and that they were putting an unconscionable burden on the Menominee people.

I went back to the Reservation prior to termination on August 8, 1960. The Menominee General Council had asked the Secretary of the Interior that I be assigned to the

Reservation. When I got back I went to Madison and spent several days there conferring and consulting with the attorney general's office, the Conservation Department and various social agencies, the Industrial Commission and the Public Service Commission in order to try to bring myself up to date on the status of affairs. I also had discussions with the representative of Foley & Lardner, a law firm which was still associated with us in trying to find a starting point for attacking the problems that were outlined in the April, 1960 report. Under the amended Termination Act, there was language that the Menominee Tribe had to have its business corporation and its voting trust structure organized by March 1, 1961 or the Secretary of the Interior was again instructed to develop a trust management plan of his own and transfer the Menominee properties over to a trustee of his choice for management or disposition.

In working against that deadline, it was important that we find substantial people who would serve as trustees and directors for Menominee Enterprises. I engaged myself in that to a large extent. I also worked with the Advisory and General Councils and the Menominee Tribe on perfecting these programs and getting the elections and so forth completed. We did something about sewer and water problems. I worked with the Department of Health, Education and Welfare and with Tribal people on perfecting sewer and water improvements and public school construction and road completion. I had a lot to do with putting the forest management plan into final form.

I worked as a Bureau of Indian Affairs employee on these various problems until termination. After termination I retired from my position with the Bureau of Indian Affairs. This was not a regular retirement. It was a short-term retirement, a reduced-term retirement.

After I retired I stayed on with Menominee Enterprises at that particular time as assistant to the president. My duties were to work with the Tribal land problems, that is deeding out or leasing out homesites and business sites to Tribal people who wanted them. I served as the personnel officer. We negotiated the labor contract. I was also the liaison officer with the regulatory agencies in Madison on utility regulations. We set up the forest taxation procedures, the utility regulations and that sort of thing. We had problems to work on at that time. We had to set up procedures for workmen's compensation, coverages under the Industrial Commission and safety measures had to be worked out in our saw mill plant. There were innumerable regulatory agencies that had to be dealt with. I stopped working as an employee of Menominee Enterprises in 1968 at my doctor's insistence.

During the course of the Menominee termination plans, development projections were made as to the economic viability of Menominee County and Menominee Enterprises. These projections did not turn out to be accurate.

The projections failed to materialize because of two major problems. First, during developmental days of the program, we relied heavily on estimates made by the University Study Group in regard to funds needed for community support. When we set up a budget to fund Menominee County, we found a need for approximately $400,000 annually; we actually needed almost $600,000. Secondly, the projections on financial viability were based on a forest management plan developed by the Federal Government between 1957 and 1960. These plans indicated that instead of cutting a maximum of around two million feet of timber a year, we would cut up to 30 million and sometimes

as high as 35 million in order to put the forest in what they call condition class. When we began to operate under Menominee Enterprises we adopted the federally developed forest management plan and began to gear up to a 30 million a year harvest. By 1965 we had reached this level of production.

In the operating year of 1966 actual experience showed that the forest management plan was not dependable. We couldn't get the harvest out of the forests that we had expected. We had to cut our operating plans back to between 20 and 22 million feet of timber. The estimates that we had were low. We found then that the forest produced about 25% or more less than we had expected. The increased level of expenditures on the part of local government was an important factor for Menominee Enterprises because at the outset Menominee Enterprises had to pay 93% of the total tax burden for the support of all activities.

Our annual production in forest yield is currently down around 14 million. This is roughly 50% of the amount that was projected. An error of this magnitude occurred because the forest management plan was developed on what they call photointerpretation. With some ground checking, they were able to determine the species that were established on the ground and to determine the volume. Now this is the point at which the plan proved independable. When we actually got out to start logging we found that you couldn't get the yield that the plan said you would get.

Today without the lake development there is no possible way that Menominee Enterprises, Inc. could pay the amount of taxes that are needed to be paid.

In response to these problems the Menominees in 1960 immediately petitioned Congress to provide some financial aid in lieu of taxation. These aids were granted through 1964, I believe. We received 438,000 dollars for sewer and water improvement. We received 660,000 dollars to relieve the education tax burden. After 1966 we again petitioned Congress when we found that the forests were not yielding what they were supposed to yield. We then got what is called the Nelson-Laird aids which gave us another 450,000 dollars for sewer and water improvement. We received a total of about $1,400,000 in tax relief aids for education, health and welfare situations. These things expired on June 30, 1970. After we got the Nelson-Laird aids we were told by members of the Congress that this would be the last aid and that we had better go home and do something for ourselves.

At the time of termination there was consideration of industrial and commercial development.

> Mr. Church: Mr. Church read from page 3 of plaintiffs' Exhibit 3. "The Menominee Tribe now operates a conventional sawmill. This is done pursuant to the act of March 23, 1908, 35 Stats. 51, an act which constituted an early model for sustained yield forestry practices. The Menominee Indian Mills have not advanced perceptibly into specialized branches of the highly competitive lumber industry. In order to survive and to improve its present economic situation, such expansion is deemed essential."
>
> Mr. Church then read from the bottom of the page. "In addition the Tribe and its successor corporation have available some of the most natural, commercial, recreational possibilities in the United States. De-

velopment of these resources is being considered and such study will continue. Assistant Secretary Ernst has volunteered to make available the knowledge and advice of the National Parks Service and the Bureau of Fish and Wildlife in this effort. What will develop along this line is uncertain, but this is one field which will have high priority on the part of Tribal leaders and the executives and Board of Directors of Menominee Enterprises, Inc."

I was involved in some attempts to develop industrial development after termination. As assistant to the president, I was instructed to consult with the Department of Resource Development at Madison which was engaged in encouraging and locating industry all over Wisconsin. Through that office, I was given leads into the Chicago and Milwaukee areas. We were looking for something like a light metal fabricating company that would like to relocate in our area. A toy company that could use wood products once considered coming. We were looking for the recreational people, the resort people. We were following up numerous contacts and we had consultations with these types of groups but we just couldn't get the industrial development people to come in.

The main difficulty was the uncertainty of the tax structure. We didn't know where it would level out. Another difficulty was that it was always apparent that there was a freight in and freight out problem. Freighting in raw materials and freighting out finished goods was a problem. We also had the question of having a well-trained and experienced work force available.

There was interest in recreational development. Prior to termination, the Department of the Interior assigned some of their people to the Reservation to make an agricultural analysis. Their report was that the recreational potential made such projects feasible. They did not go into any detail. As a course of action they recommended that after termination we immediately consult with a firm known as Nellon Engineers in Summerset, Pennsylvania which is more or less a land expert in the recreational development field. We also consulted with a company known as the U.S. Lands which is located in Columbus, Ohio. We had consultations with firms here in Wisconsin too on recreational potential and development. All of these studies dealt with the same area, that is the area now involved in the Legend Lake project. Certain common conclusions were reached. It was commonly concluded that the Legend Lake area was not a timber producing area. It was submarginal land. At its best it would be usable for recreational development.

In 1966 when the Congress granted the tax relief aids and advised us that we should not come back for any more federal aid, the Wisconsin delegation arranged for the Department of Commerce to do a resource study of Menominee County. This work was accomplished by the firm of Ernst & Ernst in 1966. In March, 1967 they delivered a report to us. When we received the report we distributed it among the Board of Directors and the voting trust. We also sent copies to the Menominee Indian Study Committee and there was general circulation to people who were interested in this field.

Mr. Church: Mr. Church referred to stipulation of facts No. 12 which provided that on August 10, 1967 the Board of Directors and Trustees jointly passed

a resolution which approved of the economic development zones of Menominee County within the guidelines specified by the Ernst & Ernst report.

The Ernst & Ernst report recommended lake development at the location of the present Legend Lake project.

* * *

The economic development zone resolution was approved by unanimous vote of both the Trustees and the Board of Directors. The Trustees and the Board of Directors also requested that a referendum be held on the subject among all enrolled Menominees. The referendum was held on September 23, 1967.

Efforts were made to communicate the facts concerning the economic development plan to individual Menominees prior to the actual vote. On August 17, 1959 we mailed out to all the Menominee people throughout the country copies of what we called the Status Report Menominee Indians 1967 with the resolution of August 10, 1967 attached. We also set up meetings in Neopit and Keshena, Milwaukee and Chicago to discuss the report and recommendations with Tribal members. I was present during those meetings. The vote of the adult members was about 18 to 11 in favor of the economic development concept. The vote approved the issuance of warranty deeds and land transactions. This ratio does not consider the vote of the First Wisconsin or other minors' votes. After the September referendum Menominee Enterprises on its own action based on previous engineering studies that had been made started to clear the land and excavate for the creation of the west end of what is now Legend Lake. By the early part of 1968 we realized that we needed more expert help in the fields of engineering, hydrology, and other areas of expertise in

which we were not prepared. Promotion and financing were not sufficiently available to us to do a good job. When this was realized we consulted with other developmental companies and finally invited Isaacson & Associates to join with us in the Legend Lake effort. We had made a review of his earlier projects.

Mr. Church: Mr. Church read stipulation of facts No. 14. "On July 9, 1968, MEI and N. E. Isaacson and Associates, Inc., herein called Isaacson, entered into a joint agreement calling themselves Lake of the Menominees. They planned to develop and sell to persons including non-Menominees certain lands situated in that part of the economic zone approved for development." Mr. Church also referred to Exhibit 53 which is a resolution unanimously taken on July 15th and 18th, 1968 specifically defining the Legend Lake development area.

I am familiar with Exhibit 53 and its attachments. The lands described as involved in the project cover all of what is today the Legend Lake project. The lake property paid in 1971 about 36% of Menominee County taxes. If this project goes through to completion the lake residents will pay about 65% of Menominee County taxes. Menominee Enterprises, Inc. put in the land which I have described as submarginal as a contribution to this partnership. At the time the land was put into the partnership its assessed value was $50.00 an acre.

Mrs. Downs: Mrs. Downs noted her objection to this line of questioning.

The present assessed valuation of the land is around $10,000 to $12,000 an acre. The initial contributions to the partnership on our part was around 1,300 acres. This composed less than 1% of the entire county. As a result of this project, Menominee Enterprises, Inc. has to date realized a little over $1,800,000. Upon completion the projected profits are another $2,000,000. This project is absolutely necessary to the survival of Menominee Enterprises.

Cross-examination by Mrs. Downs.

In our notice to the Menominee people concerning the referendum of 1967 we announced that the referendum would be an advisory vote on their part and that the responsibilities lay with the trustees for the adoption of the resolution. We further advised that the implementation would lie with the Board of Directors. The fact that the referendum was advisory was printed right in the notice that went out regarding the meeting.

I see that defendants' Exhibit 57 is a copy of the Menominee News dated June 1, 1959. During direct examination I read an item on page 16 in which Mr. Bower stated that the voting stockholders would be the voting trustees as to land sales for the first ten years.

Plaintiffs' Exhibit 12 is a copy of the Menominee General Council minutes for January 17, 1959. That was the day that the Menominee termination plan was adopted by the General Council. It doesn't appear from page 2 that either Mr. Bower or Mr. Fisher is listed as present at that meeting. I don't think they were present.

Question by Mr. Church: Do you have a list from your own recollection as to when and where General Council meetings occurred?

Kenote: Yes, I do.

The Court asked whether the witness had records to substantiate the meetings.

Kenote: I maintain a personal file through all these years. I don't have it with me. I do have access to the minutes of the General Council but I don't have them all with me. There were other meetings besides those that were discussed at this trial.